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19 *Attorneys for Defendants Philips Electronics North*  
20 *America Corporation, Philips Taiwan Ltd., and Philips*  
21 *do Brasil Ltda.*

22 UNITED STATES DISTRICT COURT  
23 NORTHERN DISTRICT OF CALIFORNIA  
24 SAN FRANCISCO DIVISION

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25 In re: CATHODE RAY TUBE (CRT) ) Case No. 07-5944-SC  
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1 *Best Buy Co., Inc. v. Technicolor SA,* )  
2 No. 13-cv-05264; )  
3 *Interbond Corp. of Am. v. Hitachi, Ltd.,* )  
4 No. 11-cv-06275; )  
5 *Interbond Corp. of Am. v. Technicolor SA,* )  
6 No. 13-cv-05727; )  
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13 *P.C. Richard & Son Long Island Corp. v.* )  
14 *Hitachi, Ltd.,* )  
15 No. 12-cv-02648; )  
16 *P.C. Richard & Son Long Island Corp. v.* )  
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1 **I. INTRODUCTION**

2 In their Motion for Partial Summary Judgment, Philips Electronics North America Corporation,  
 3 Philips Taiwan Ltd., and Philips do Brasil Ltda. (collectively, the “Philips Subsidiaries” or the  
 4 “Subsidiaries”) identified unambiguous evidence showing (1) that, in June 2001, they completely and  
 5 permanently severed all ties to the manufacture and sale of CRTs; (2) that widespread media coverage  
 6 publicized their exit; (3) that no employee of the Philips Subsidiaries participated in any alleged  
 7 anticompetitive conduct after June 2001; and (4) that none of the Philips Subsidiaries had any interest  
 8 in the alleged conspiracy after June 2001. At the same time, as manufacturers of finished products  
 9 using CRTs, the Philips Subsidiaries were *purchasers* of CRTs after June 2001, and the evidence  
 10 shows that, as purchasers of CRTs, the Subsidiaries zealously negotiated for the lowest CRT prices  
 11 possible from LPD as well as its other CRT suppliers, contrary to every objective of the alleged cartel.<sup>1</sup>

12 In response, Plaintiffs do not cite any evidence disputing those points. Instead, they attempt to  
 13 shift the Court’s attention away from the conduct of the Philips Subsidiaries, which is all that matters  
 14 for this Motion, and towards the alleged conduct of Koninklijke Philips N.V. (“KPNV”) and LG  
 15 Philips Display (“LPD”). In doing so, they ignore the well-established principle that separately  
 16 incorporated legal entities cannot be held liable for each other’s conduct, absent a finding of agency or  
 17 vicarious liability. Because Plaintiffs do not argue that the acts of KPNV or LPD are in any way  
 18 attributable to any of the Philips Subsidiaries, the Court should ignore Plaintiffs’ frequent detours into  
 19 the purported conduct of KPNV and LPD and consider only evidence relating to the conduct of the  
 20 Subsidiaries—and, on this score, Plaintiffs again cite none.

21 Plaintiffs attempt to argue that there are three reasons why a genuine issue of material fact  
 22 exists as to whether the Philips Subsidiaries withdrew from the alleged conspiracy in June 2001. They  
 23 fail on all counts.

24

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25 <sup>1</sup> Plaintiffs are not asserting claims in this action premised on an alleged price-fixing conspiracy in the  
 26 sale of finished products, e.g., televisions and monitors. Therefore, the fact that the Subsidiaries sold  
 27 products containing CRTs after June 2001 has no relevance except as further evidence that the  
 Subsidiaries were not manufacturing and selling CRTs.

1       First, Plaintiffs assert that the Philips Subsidiaries did not sever all ties to the conspiracy upon  
 2 the formation of LPD because the Subsidiaries remained “within the global Philips corporate family,”  
 3 and their parent corporation (KPNV) purportedly “controlled” LPD. *See* Opp’n at 15–19. Not  
 4 surprisingly, Plaintiffs cite no authority finding a lack of severance based on such a tenuous connection  
 5 between the withdrawing party and the remaining alleged co-conspirators. That is because there is  
 6 none. And Plaintiffs offer no explanation as to why the Court should break new ground and find that  
 7 these legally separate entities (the Philips Subsidiaries) were apparently prohibited as a matter of law  
 8 from withdrawing until a different corporation (KPNV) divested its interest in an alleged co-  
 9 conspirator (LPD).<sup>2</sup> Severance of participation in the conspiracy and notice to former co-conspirators  
 10 is all that the law requires. *See United States v. U.S. Gypsum Co.*, 438 U.S. 422, 464–65 (1978)  
 11 (“Affirmative acts inconsistent with the object of the conspiracy and communicated in a manner  
 12 reasonably calculated to reach co-conspirators have generally been regarded as sufficient to establish  
 13 withdrawal or abandonment.”).

14       Second, Plaintiffs assert that the conduct effectuating the withdrawal of the Subsidiaries did not  
 15 provide sufficient notice to the other co-conspirators. *See* Opp’n at 19–21. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED].<sup>3</sup> [REDACTED]

21 [REDACTED] Opp’n at 20. But, in making that argument, Plaintiffs once  
 22 again choose to ignore basic principles of corporate separateness by resorting to the use of “Philips.”

23

---

24       <sup>2</sup> Of course, a situation where the parent corporation remains a member of the conspiracy and the  
 25 subsidiary withdraws is not present here. As KPNV has explained, there is no evidence in the record  
 26 suggesting that it ever joined or participated in the alleged conspiracy. *See* KPNV Mot. for Summ. J.  
 at 9–15 (Dkt. No. 3040).

27       <sup>3</sup> *See* Mot. at 6–7 (citing Exs. 9, 11, 15–27).

28

1 The evidence cited by Plaintiffs simply references the existence of a joint venture between KPNV and  
 2 LG, and does not evidence any intended role for the Philips Subsidiaries in the ownership or operation  
 3 of LPD. Even assuming Plaintiffs' description of KPNV's role is accurate (it is not), that role is not  
 4 attributable to the Philips Subsidiaries as a matter of law. Plaintiffs also highlight the testimony of Jim  
 5 Smith, who was an employee of Philips Taiwan at the time of the severance, because [REDACTED]  
 6 [REDACTED] See  
 7 *id.* at 20–21. Of [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED] See Ex. 1,  
 10 Jim Smith Dep. Tr. (12/12/2013) at 282:25–283:4 (emphasis added). Absent the manufactured  
 11 connection between the Subsidiaries and LPD based on KPNV's purported control over LPD,  
 12 Plaintiffs have done nothing to dispute that the other alleged co-conspirators were in fact aware that the  
 13 Subsidiaries had withdrawn from the alleged conspiracy.

14 Third, Plaintiffs argue that the Subsidiaries purchased CRTs from LPD “regardless of whether  
 15 LPD offered a competitive price.” *See* Opp’n at 21–22. Although the Subsidiaries do not need to  
 16 show that they engaged in a certain type of negotiations to establish withdrawal, Plaintiffs’ description  
 17 of their purported conduct bears no connection to the actual evidence. [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]

22 [REDACTED] See Ex. 57 to Pls.’ Opp’n to  
 23 Philips Subsidiaries Mot. for Summ. J., at PHLP-CRT-163389–90. [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]. *Id.* at PHLP-163389. [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]

1 *Id.* [REDACTED]2 [REDACTED] *Id.* [REDACTED]

3 [REDACTED]

4 **II. ARGUMENT**5 **A. Plaintiffs cannot *sub silentio* impute the conduct or interests of other entities, like**  
6 **KPNV or LPD, to the Philips Subsidiaries.**

7 “[A] parent company is presumed to have an existence separate from its subsidiaries.” *NFC*  
 8 *Collections LLC v. Deutsche Bank Aktiengesellschaft*, No. CV 12-10718 DDP (JEMx), 2013 WL  
 9 3337800, at \*7 (C.D. Cal. 2013). Only in “unusual circumstances,” such as where a principal-agent  
 10 relationship exists or where one corporate entity is the alter ego of the other, will the law permit a  
 11 parent corporation or its subsidiary to be held liable for the other’s acts. *See Bowoto v. Chevron*  
 12 *Texaco Corp.*, 312 F. Supp. 2d 1229, 1234 (N.D. Cal. 2004). Here, Plaintiffs do not contend that the  
 13 Court should disregard the separate corporate existence of the Philips Subsidiaries, which means that  
 14 Plaintiffs cannot rely on the purported acts of others, including *former* employees of the Philips  
 15 Subsidiaries, to defeat the Subsidiaries’ Motion for Partial Summary Judgment.

16 Despite making no argument that KPNV or LPD served as the alter ego of the Subsidiaries,  
 17 Plaintiffs’ Opposition still discusses at length the conduct of KPNV and LPD. *See* Opp’n at 3–14. The  
 18 Court should disregard Plaintiffs’ attempt to muddy the factual waters and should focus on evidence  
 19 (or more aptly the lack thereof) showing the Philips Subsidiaries’ alleged connection to the conspiracy  
 20 after June 2001.

21 **B. Plaintiffs have failed to identify any evidence suggesting that the Philips**  
22 **Subsidiaries participated or retained an interest in the conspiracy after severing**  
23 **their ties to the manufacture and sale of CRTs.**

24 Presuming that a defendant joined the alleged conspiracy, proving withdrawal requires two  
 25 steps. First, the defendant must have taken “definite, decisive, and positive steps to show . . . [their]  
 26 disassociation from the conspiracy.” *United States v. Lothian*, 976 F.2d 1257, 1261 (9th Cir. 1992).  
 27 Second, the affirmative acts showing dissociation must be “communicated in a manner reasonably  
 28 calculated to reach co-conspirators.” *Gypsum Co.*, 438 U.S. at 464–65.

1 As the Philips Subsidiaries demonstrated in their Motion, courts have consistently found  
 2 severing ties with an industry or retiring from an industry is sufficient to establish withdrawal. *See*  
 3 Mot. at 11–12 (citing *Morton's Mkt., Inc. v. Gustafson's Dairy, Inc.*, 198 F.3d 823 (11th Cir. 1999)  
 4 amended by 211 F.3d 1224 (2000), and *United States v. Nippon Paper Indus. Co.*, 62 F. Supp. 2d 173  
 5 (D. Mass. 1999)).<sup>4</sup> Where courts have found no severance, it has been because the defendant either  
 6 continued to benefit directly from the conspiracy or continued to have some active role in it.<sup>5</sup>

7 Plaintiffs take no issue with the legal standard for withdrawal or the case law applying that  
 8 standard, as presented by the Philips Subsidiaries. *See* Opp'n at 15–21. Instead, they simply argue  
 9 that the Philips Subsidiaries did not sever all ties with the industry, which according to Plaintiffs,  
 10 distinguishes the facts of this case from those cited by the Subsidiaries. *See id.* The very facts relied  
 11 on by Plaintiffs undermine their argument.

12 For example, Plaintiffs assert that [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED] *Id.* at 16–19. [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]

19 \_\_\_\_\_  
 20 <sup>4</sup> *See also United States v. Steele*, 685 F.2d 793, 803 (3d Cir. 1982) (holding it was error to deny  
 21 defendant's motion for a judgment of acquittal based on withdrawal where “[t]he government has  
 22 pointed to no evidence that Naples participated in the conspiracy in any way following his resignation,  
 but it argues that his silence thereafter could be considered by the jury as evidence of his continuing  
 participation.”).

23 <sup>5</sup> *See, e.g., United States v. Bullis*, 77 F.3d 1553, 1561–63 (7th Cir. 1996) (finding no withdrawal  
 24 where defendant left his position, i.e., severed ties, because defendant continued to communicate with  
 25 co-conspirators and proposed action to cover-up the conspiracy); *United States v. Antar*, 53 F.3d 568,  
 583 (3d Cir. 1995) overruled on other grounds by *Smith v. Berg*, 247 F.3d 532, 534 (3d Cir. 2001)  
 26 (explaining that “even if the defendant completely severs his or her ties with the enterprise, the  
 defendant still may remain a part of the conspiracy if he or she continues to do acts in furtherance of  
 the conspiracy and continues to receive benefits from the conspiracy's operations” and holding that  
 27 defendant did not withdraw because retained a direct economic interest in the conspiracy).

1 To the extent Plaintiffs are focusing only on whether anyone at the Subsidiaries had knowledge  
 2 of the alleged conspiracy after June 2001, *see Opp'n at 13* (citing Ex. 56), that question has little  
 3 relevance to this Motion. It is well-established that a withdrawing co-conspirator has no obligation to  
 4 take acts to expose and stop the conspiracy, *see Morton's Mkt.*, 198 F.3d at 839 ("In order to  
 5 effectively withdraw, however, it is not necessary for the conspirator to disclose the illegal scheme to  
 6 the authorities."), but absent efforts to expose the continuing conspiracy, the now-withdrawn defendant  
 7 will obviously still retain knowledge of its existence. Plaintiffs have cited no authority holding that a  
 8 corporation must purge all employees with knowledge of the conspiracy before it may withdraw from  
 9 the conspiracy. [REDACTED]

10 [REDACTED]  
 11 [REDACTED]  
 12 [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]

18 Because Plaintiffs do not dispute that the Philips Subsidiaries completely exited from the  
 19 manufacture and sale of CRTs and they have failed to identify any evidence suggesting that the Philips  
 20 Subsidiaries continued to take action to advance the interests of the alleged conspiracy or retained an  
 21 interest in the alleged conspiracy, the Philips Subsidiaries have established that they severed all ties to  
 22 the alleged conspiracy.

23 **C. Plaintiffs do not meaningfully dispute that the Philips Subsidiaries informed their  
 24 alleged co-conspirators of their exit from the manufacture and sale of CRTs.**

25 Unable to show that the alleged co-conspirators were unaware that the Philips Subsidiaries  
 26 severed all ties to the alleged conspiracy, i.e., the manufacture and sale of CRTs, they subtlety attempt  
 27 to modify the notice standard set forth by the Supreme Court in *Gypsum*. *See Opp'n at 19–21* (stating  
 28

1 in heading C. that “The Philips Subsidiaries Did Not Communicate Their Alleged Withdrawal to Co-  
 2 Conspirators”); *id.* at 20 (“there is direct evidence that Philips did not communicate its alleged  
 3 withdrawal”). Contrary to Plaintiffs’ apparent view, a defendant does not have to provide actual notice  
 4 of withdrawal from the conspiracy to his co-conspirators where they have in fact announced their  
 5 withdrawal from the industry—as Jim Smith explained, [REDACTED]

6 [REDACTED]  
 7 [REDACTED].<sup>6</sup>

8 For example, in *United States v. Nerlinger*, the Second Circuit explained that the defendant  
 9 established withdrawal where he closed the bank account used by him to participate in the conspiracy  
 10 and resigned from his position at the bank because “it disabled him from further participation and [he]  
 11 made that disability known to [other co-conspirators].” 862 F.2d 967, 974 (2d Cir. 1988) (“Nothing  
 12 . . . requires the hiring of a calligrapher to print formal notices of withdrawal to be served upon co-  
 13 conspirators.”). And, as explained in the Subsidiaries’ Motion, *see* Mot. at 11–15, the facts of this case  
 14 closely resemble those of *Morton’s Market*, where the plaintiffs alleged that the defendants conspired  
 15 to fix prices of dairy products. 198 F.3d at 839. There, the Eleventh Circuit explained that:

16 With the sale of its dairy, Pet certainly “retired” and totally severed its  
 17 ties to the milk price-fixing conspiracy. It did nothing more to assist or  
 18 participate in the price-fixing activities of the other dairies. This  
 19 retirement was communicated to the other dairies by the media. They  
 20 knew that from that time on, Pet would not lend its services to the  
 21 conspiracy. Thus, the purposes of the conspiracy were defeated at least  
 22 as to Pet. We conclude, therefore, that Pet did effectively withdraw from  
 23 the price-fixing conspiracy upon the sale of its dairy. *Id.*

24 Plaintiffs have identified no evidence suggesting that the Philips Subsidiaries had any role in  
 25 the alleged conspiracy after the formation of LPD. While Plaintiffs again resort to lazily contending  
 26

27 <sup>6</sup> See Ex. 1, Jim Smith Dep. Tr. (12/12/2013) at 282:25–283:4.  
 28

1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]. Similarly, reference to a press release stating that “[REDACTED]  
 4 [REDACTED]” *id.*, w[REDACTED]  
 5 [REDACTED]

6 Accordingly, Plaintiffs have failed to identify any evidence suggesting that the Philips  
 7 Subsidiaries did not provide adequate notice of their severance of all ties to the manufacture and sale  
 8 of CRTs and the alleged conspiracy, and cannot disprove the evidence to the contrary showing notice.

9 **D. Plaintiffs' Evidence Shows That The Philips Subsidiaries Negotiated For The  
 10 Lowest Possible CRT Price.**

11 Although not a necessary element of withdrawal, if the withdrawing defendant resumes  
 12 competitive behavior, that fact will also support a finding of withdrawal because competition is an act  
 13 that is inconsistent with the purpose of a price-fixing conspiracy. *See Nippon Paper*, 62 F. Supp. 2d at  
 14 190. In response to the Philips Subsidiaries' argument that they resumed competition with LPD,  
 15 Plaintiffs cite several documents that can only be read to show the resumption of competitive behavior.  
 16 We say “resumption,” but in fact there is no evidence that the non-CRT businesses of the Philips  
 17 Subsidiaries ever behaved in a non-competitive way. So the evidence reveals that, once the CRT  
 18 businesses were excised from the Philips Subsidiaries along with the alleged participants in the  
 19 anticompetitive conduct, the remainder of the Philips Subsidiaries acted in a fully competitive manner.

20 [REDACTED]  
 21 [REDACTED], *see*  
 22 Opp'n at 13 (citing Ex. 56), [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]  
 26 [REDACTED]  
 27 [REDACTED]  
 28

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED].

5 Similarly, in Exhibit 57 to Plaintiffs' Opposition, Pele Lai, a [REDACTED]

6 [REDACTED]  
7 [REDACTED] *See Opp'n at 13.* [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 There are many other examples of the Philips Subsidiaries working diligently to obtain lower  
13 CRT prices from LPD after June 2001.

- 14 • Ex. 2, E-mail from Jan De Lombaerde to Alain Perrot (Mar. 5, 2005, 1:04:32 P.M.) at  
15 PHLP-CRT-148288 [REDACTED]  
16 [REDACTED]
- 17 • Ex. 3, E-mail from Arie Leunis, LPD, to Jan De Lombaerde (Dec. 5, 2004) at PHLP-  
18 CRT-150977 ([REDACTED]  
19 [REDACTED]  
20 [REDACTED])
- 21 • Ex. 4, E-mail from Herve Boileau, Purchasing Manager Philips Consumer Electronics,  
22 to Arie Leunis, *et al.* (June 9, 2004, 04:43 P.M.) at PHLP-CRT-149178 ([REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]).
- 26 • Ex. 5, E-mail from Jan De Lombaerde to Rik Dombrecht (Nov. 29, 2005, 1:46:53 P.M.)  
27 at PHLP-CRT-064967 ([REDACTED])

1 [REDACTED]  
 2 [REDACTED]  
 3 Finally, Plaintiffs make much of the assertion that KPNV endorsed a certain level of purchases  
 4 from LPD. *See* Opp'n at 21–23. Plaintiffs, however, do not explain the significance of those facts to  
 5 the Subsidiaries' withdrawal argument. The mere fact that management suggested it was the best  
 6 policy for a certain level of purchases to be made from LPD has nothing to do with the Philips  
 7 Subsidiaries, especially in an industry where using the same tube manufacturer often presented cost  
 8 savings to the buyer because the buyer knew the tubes would meet its specifications.<sup>7</sup> Specifically, it  
 9 does not support the assertion that the Philips Subsidiaries had ongoing participation or interest in the  
 10 alleged conspiracy.

11 In sum, the Philips Subsidiaries demonstrated that they were engaging in fully competitive  
 12 activity regarding the pricing of CRTs after June 2001. *See* Mot. at 16–17. In response, Plaintiffs  
 13 failed to identify any evidence suggesting that the Subsidiaries did not vigorously pursue the best CRT  
 14 price, regardless of the identity of the supplier, after June 2001. Those facts further support a finding  
 15 that, assuming arguendo, the Subsidiaries knowingly joined the alleged conspiracy at some point, they  
 16 withdrew from the alleged conspiracy in June 2001.

17 **CONCLUSION**

18 For the foregoing reasons, the Court should enter an Order granting partial judgment on behalf  
 19 of the Philips Subsidiaries of Plaintiffs' claims.

20  
 21  
 22  
 23  
 24  
 25 <sup>7</sup> *See* Ex. 6, Jan De Lombaerde Dep. Tr. (10/9/2014) at 120:22–123:11  
 26 [REDACTED]  
 27 [REDACTED]  
 28

1 Dated: January 23, 2014

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